

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- ) Case No. 17 CR 40  
 )  
 ) Chicago, Illinois  
 RAKIM ASAD, et al., ) January 19, 2022  
 ) 1:30 p.m.  
 Defendants. )

TELEPHONIC TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN J. THARP, JR.

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
BY: MS. SHERI L. WONG  
MR. PAUL JOSEPH MOWER  
219 S. Dearborn Street  
5th Floor  
Chicago, IL 60604

For Defendant  
Rakim Asad: LAW OFFICES OF ANDREA E. GAMBINO  
BY: MS. ANDREA ELIZABETH GAMBINO  
53 W. Jackson Boulevard  
Suite 1332  
Chicago, IL 60604

For Defendant  
Akeem Asad: MS. BLAIRE C. DALTON  
53 W. Jackson Boulevard  
Suite 1523  
Chicago, IL 60604

Court Reporter: KELLY M. FITZGERALD, CSR, RMR, CRR  
Official Court Reporter  
United States District Court  
219 South Dearborn Street, Room 1420  
Chicago, Illinois 60604  
Telephone: (312) 818-6626  
kmftranscripts@gmail.com

1 APPEARANCES: (Continued)

2 For Defendant  
3 Mardi Lane:

LAW OFFICES OF ELLEN R. DOMPH  
BY: MS. ELLEN R. DOMPH  
53 W. Jackson Boulevard  
Suite 1544  
Chicago, IL 60604

5 For Defendant  
6 Reginald Jones:

GOTTREICH & LEVINSOHN  
BY: MS. ANNE REBECCA IZZI  
311 W. Superior Street  
Suite 215  
Chicago, IL 60654

8 For Defendant  
9 Dijon Foston:

NOVELLE & ROELLIG  
BY: MR. TIMOTHY R. ROELLIG  
47 W. Polk Street  
Suite M11  
Chicago, IL 60605

11 For Defendant  
12 Cottrell Mackey:

LAW OFFICES OF JOHN MIRAGLIA  
BY: MR. JOHN M. MIRAGLIA  
910 W. Van Buren  
#25  
Chicago, IL 60607

14 For Defendant  
15 Carey Hinton:

LAW OFFICE OF FRANCIS C. LIPUMA  
BY: MR. FRANCIS C. LIPUMA  
105 W. Adams Street  
35th Floor  
Chicago, IL 60603

17 For Defendant  
18 Tony Parker:

HALLOCK LAW  
BY: MR. THOMAS C. HALLOCK  
53 W. Jackson Boulevard  
Suite 1424  
Chicago, IL 60604

20 For Defendant  
21 Quentin Lucious:

KENT R. CARLSON & ASSOCIATES P.C.  
BY: MR. KENT R. CARLSON  
53 W. Jackson Boulevard  
Suite 1523  
Chicago, IL 60604

23 For Defendant  
24 Derrick McNeal:

MR. JOSHUA B. KUTNICK  
900 W. Jackson Boulevard  
Suite 7E  
Chicago, IL 60607

25

1 (Proceedings heard via telephone:)

2 THE COURT: Good afternoon. This is Judge Tharp.  
3 We're calling the case of United States v. Asad, et al., 17 CR  
4 40.

5 If you are participating in this call, please keep  
6 your line on mute unless you are actively engaged in the  
7 discussion that is occurring.

8 I want to first start out getting appearances on the  
9 record.

10 Do we have counsel for the United States on the line?

11 MS. WONG: Yes, Your Honor. Sheri Wong and Paul  
12 Mower on behalf of the United States.

13 THE COURT: All right. Good afternoon.

14 Do we have counsel for Rakim Asad on?

15 MS. GAMBINO: Yes. Yes, Your Honor. Good afternoon.  
16 This is Andrea Gambino on behalf of Mr. Asad.

17 THE COURT: Good afternoon.

18 Do we have counsel for Akeem Asad on the line?

19 MS. DALTON: Yes. Good afternoon, Your Honor.  
20 Blaire Dalton on behalf of Akeem Asad.

21 THE COURT: All right. And I should have asked, I'm  
22 not sure the situation with respect to defendants given the  
23 additional restrictions we're operating under with the MCC and  
24 getting people access to phones in light of the COVID spike.

25 Do we have Rakim Asad on the line?

1 (No response.)

2 THE COURT: All right.

3 MS. GAMBINO: Your Honor, he's in custody, so I don't  
4 believe he is on the line.

5 THE COURT: All right. Okay. I'm just going to  
6 double-check. Sometimes folks show up unexpectedly.  
7 Sometimes they don't show up when we expect them. So bear  
8 with me here.

9 All right. So we have, I'm sorry, Akeem Asad's  
10 counsel, Ms. Dalton, you're on?

11 MS. DALTON: Yes, Your Honor.

12 THE COURT: All right. Do we have Akeem Asad on the  
13 line?

14 MS. DALTON: I do not believe so.

15 THE COURT: All right.

16 Counsel for Mardi Lane?

17 MS. DOMPH: Good afternoon. Ellen Domp on behalf of  
18 Mr. Lane.

19 THE COURT: Good afternoon. Is Mr. Lane on the line?

20 (No response.)

21 THE COURT: All right. No response.

22 Counsel for Martez Easter?

23 (No response.)

24 THE COURT: All right. Not on the line.

25 Counsel for Reginald Jones?

1 MS. IZZI: Yes, good afternoon, Judge. Annie Izzi,  
2 I-z-z-i, from Mark Gottreich's office on behalf of Mr. Jones.

3 THE COURT: Okay. Good afternoon. And before I  
4 forget, as I was preparing for this afternoon, I don't believe  
5 Mr. Gottreich has an appearance on file on behalf of  
6 Mr. Jones.

7 MS. IZZI: Oh.

8 THE COURT: So bring that to his attention, please.

9 MS. IZZI: Yes, I will, and we will get that filed.  
10 Thank you.

11 THE COURT: It's possible --

12 MR. KUTNICK: Excuse me, Your Honor. This is Joshua  
13 Kutnick. I represent Derrick McNeal. I believe he's a  
14 co-defendant in this matter.

15 THE COURT: Yes?

16 MR. KUTNICK: Oh, I'm sorry. I guess I hadn't been  
17 called yet, Your Honor.

18 THE COURT: We'll get to you, Mr. Kutnick.

19 All right. So, Ms. Izzi, if you would pass that on  
20 to Mr. Gottreich so he'll get his appearance on the record.  
21 And if you're going to be participating in the case, you  
22 should enter an appearance as well.

23 MS. IZZI: I will, Judge. Thank you.

24 THE COURT: All right.

25 Do we have counsel for Dijon Foston?

1 MR. ROELLIG: Yes, Judge. Tim Roellig on behalf of  
2 Mr. Foston.

3 THE COURT: All right. Is Mr. Foston on the line?  
4 (No response.)

5 All right. No answer, so we'll assume no.

6 Counsel for Cottrell Mackey?

7 MR. MIRAGLIA: Good afternoon. John Miraglia on  
8 behalf of Mr. Mackey.

9 THE COURT: All right. Good afternoon. Is  
10 Mr. Mackey on the line?

11 (No response.)

12 THE COURT: All right. No response.

13 Counsel for Carey Hinton?

14 MR. LIPUMA: Good afternoon, Judge. Frank Lipuma on  
15 behalf of Carey Hinton, and I believe Mr. Hinton is on the  
16 line.

17 THE COURT: Okay. I think I heard him earlier as  
18 well.

19 Mr. Hinton, are you on the line? You may be muted,  
20 Mr. Hinton.

21 We're still not hearing you, Mr. Hinton. If you're  
22 on the line, can you ask the correctional officers to take you  
23 off mute?

24 All right. For the record, we're still not hearing  
25 Mr. Hinton. Hopefully he will join in. I know we made

1 arrangements for him to participate and did hear him on the  
2 line right before the call started. I'm not sure what the  
3 problem is now.

4 Counsel for Tony Parker?

5 MR. HALLOCK: Good afternoon, Judge. Tom Hallock on  
6 behalf of Tony Parker.

7 THE COURT: All right. Is Mr. Parker on the line?  
8 He's in custody in IDOC, correct?

9 MR. HALLOCK: Judge, he's in Winnebago.

10 THE COURT: Oh, he's in Winnebago. Is he on the  
11 line?

12 (No response.)

13 THE COURT: All right. No response.

14 Counsel for Quentin Lucious, or "LUSH-is"?

15 MR. CARLSON: Good afternoon, Your Honor. Kent  
16 Carlson on behalf of Quentin Lucious, and he is not on the  
17 line.

18 THE COURT: Okay. Thank you.

19 Counsel for Harriette McPherson?

20 MR. LIPUMA: Good afternoon, Judge. Frank Lipuma  
21 again. I'm standing in for Matt Madden. He asked me to stand  
22 in for him, Judge. And I'm not aware whether Ms. McPherson is  
23 on the line or not.

24 THE COURT: All right. Ms. McPherson, are you on the  
25 line?

1 (No response.)

2 THE COURT: All right. No response.

3 Counsel for Derrick McNeal?

4 MR. KUTNICK: Good afternoon, Your Honor. Joshua  
5 Kutnick on behalf of Derrick McNeal. I do not believe he's on  
6 the line.

7 THE COURT: Okay. Thank you. Good afternoon.

8 And I'm not expecting Mr. Clancy on behalf of Rashad  
9 Underwood but just in case he's on the line?

10 (No response.)

11 THE COURT: Okay. All right. Any defendants on the  
12 line that we missed? At this juncture I've registered no  
13 defendants participating in the call.

14 All right. With respect to Mr. Hinton, Mr. Lipuma,  
15 we'll see where we stand in terms of once we've covered the  
16 group information, we'll address the government's waiver  
17 filing. And obviously we're going to need Mr. Hinton at some  
18 point in that process. We'll see if he joins in during the  
19 course of this call or not.

20 All right. The first thing I want to do is it's been  
21 a few months now since we've had a general status in this  
22 case. I would like to hear, and I'll start with the  
23 government, what the parties' perspectives on where things  
24 stand generally before we start talking about more particular  
25 questions and issues.



1           Ms. Wong or Mr. Mower, you want to summarize where  
2 things stand from the government's perspective?

3           MS. WONG: Yes, Your Honor. This is Sheri Wong  
4 speaking.

5           At this point, since the last time we were before the  
6 Court, the government has had substantive plea discussions  
7 with a number of defense attorneys about whether their  
8 clients' cases can be resolved short of trial. And I think we  
9 can indicate at this point that we've had those discussions  
10 with seven of the defendants' attorneys thus far.

11           Based on the extent of the conversations that we've  
12 had, I believe we'll be able to have a firmer sense of whether  
13 we'll be able to reach a resolution short of trial for those  
14 particular defendants, and I think we can report a firmer  
15 status on that in the next two to three weeks.

16           We do know that there is a trial date set for June,  
17 and I think we've had discussions with various defense  
18 attorneys about the status of that trial date. I think where  
19 we are at this point is we --

20           (Audio interruption.)

21           THE COURT: Hold on, Ms. Wong.

22           This is Judge Tharp. Do we have the MCC on the line  
23 now?

24           DEFENDANT HINTON: No, this is Carey Hinton.

25           THE COURT: Okay. Mr. Hinton, what facility are you

1 housed in right now?

2 DEFENDANT HINTON: I'm in Kankakee.

3 THE COURT: Okay. All right. We lost you for a  
4 moment, but we've got you. Mr. Lipuma, your attorney, is on  
5 the line. So just stand by and we will resume our discussions  
6 in a minute.

7 DEFENDANT HINTON: Okay.

8 THE COURT: All right. Ms. Wong, I'm sorry. If you  
9 would pick back up where you left off.

10 MS. WONG: No problem.

11 Given the number of defendants, given that the number  
12 of defendants going to trial may affect potentially the trial  
13 date and also perhaps the number of trials and also in light  
14 of the parties' ongoing discussions, particularly given that  
15 we might have confirmation of the trial landscape in the next  
16 two to three weeks, we would request and suggest setting this  
17 case over for another status perhaps, you know, the week of  
18 the 7th at which time we can provide a more solid update  
19 regarding the status of which defendants may be proceeding to  
20 trial and which may be resolved short of trial.

21 We can addresses the other issues regarding  
22 outstanding pretrial motions if the Court would like, or we  
23 can stay on this topic about the trial schedule if the Court  
24 would like more detail.

25 THE COURT: All right. Well, let's -- let me hear

1 from any defendant who wants to supplement the government's  
2 report in terms of the status of things.

3 Any defense counsel want to weigh in?

4 MR. LIPUMA: Judge, this is Frank Lipuma for Carey  
5 Hinton.

6 Judge, we did receive a draft proposed plea agreement  
7 from the government last week, and I did send it off to my  
8 client last week as well. I haven't had an opportunity to  
9 discuss it with him yet. But it is something we would like to  
10 have time to consider, discuss and then report back to court  
11 whether we're going to go forward with the change of plea or  
12 not.

13 And that also ties in, Judge, to a couple of motions  
14 that we have pending with the Court, a *Brady/Giglio* motion and  
15 also a motion to suppress DNA evidence. The government by  
16 agreement filed a motion to stay briefing on those motions  
17 while we tried to resolve this case, and the Court granted  
18 that so briefing has been stayed on those motions. And I  
19 spoke with Ms. Wong earlier today, and we would agree to  
20 continue the stay on those motions while we try and pursue  
21 plea negotiations and try to resolve this case.

22 THE COURT: All right. Thank you.

23 Anybody else?

24 MS. GAMBINO: Your Honor, this is Andrea --

25 MR. KUTNICK: Your Honor --

1 (Unreportable crosstalk.)

2 THE COURT: One of you start, and the other one can  
3 follow.

4 MR. KUTNICK: Go ahead, Andrea. Go ahead.

5 MS. GAMBINO: This is Andrea Gambino on behalf of  
6 Rakim Asad.

7 We have had some discussion with respect to a plea  
8 resolution. We anticipate getting something in writing in the  
9 next couple of weeks. So I would support the request to have  
10 another status in two or three weeks.

11 THE COURT: All right.

12 Mr. Kutnick, was that you?

13 MR. KUTNICK: Yes, it was, Your Honor. On behalf of  
14 Derrick McNeal, we have a severance motion pending which would  
15 determine our course of action on the rest of the case.

16 THE COURT: All right.

17 MR. KUTNICK: But otherwise I agree with a status to  
18 determine the trial.

19 THE COURT: All right. Anyone else want to weigh in?  
20 (No response.)

21 THE COURT: All right. I agree that we need a bit  
22 more clarity in terms of what we would be talking about in  
23 terms of going to trial. So to the extent that we might get  
24 that in the next several weeks, I think we ought to see where  
25 that -- see where we are at that point. So having a status

1       sooner rather than later I think makes some sense.

2               So let me suggest a further status on February 9th at  
3       1:30 p.m. That's a Wednesday.

4               MS. WONG: Judge, I believe --

5               THE COURT: This would be a telephone status  
6       obviously.

7               Go ahead.

8               MS. WONG: Your Honor, this is Sheri Wong speaking.

9               The government has a sentencing hearing the afternoon  
10       of February 9th at 1:30. Could we possibly schedule this for  
11       either the 8th or the 10th?

12              THE COURT: Bear with me.

13              We can't do it on the 8th or the 10th. We could do  
14       it earlier in the day on the 9th, however. 9:30 on the 9th?

15              MS. WONG: Earlier on the 9th would work for the  
16       government.

17              THE COURT: All right. Anybody else have any  
18       problems with the February 9th, Wednesday, at 9:30 a.m. for a  
19       further status?

20       (No response.)

21              THE COURT: Okay. Hearing no objections or issues  
22       with that date, we'll set a further status hearing on  
23       February 9th at 9:30 a.m. That will be by telephone. If you  
24       wish your client to participate and they're in custody, you  
25       need to contact Alberta two weeks before that status hearing

1 so that she can make the arrangements to have them available  
2 to participate. That assumes that COVID restrictions permit  
3 participation. Right now we're under very significant  
4 constraints at least at the MCC on getting people to phones  
5 and video. So if you want your client in custody to  
6 participate or your client wants to participate, let Alberta  
7 know, and we can try to make those arrangements. Obviously  
8 anyone on bond is welcome to dial in as counsel does.

9 All right. There's a couple of specific things I  
10 want to just confirm and address in no particular order here.

11 Going back through the docket, the arraignment on the  
12 superseding indictment in this case, some were done by  
13 magistrate judges, some were done by me. The record -- the  
14 docket record doesn't reflect that the Due Process Protection  
15 Act advisories were provided at all arraignments. Some  
16 notations reflect that they were. Others don't say anything.

17 So to cure that problem, I want to make sure that  
18 everyone understands that pursuant to Federal Rule of Criminal  
19 Procedure 5(f)(1), the Court is confirming the prosecutor's  
20 continuing obligation under *Brady v. Maryland*, 373 United  
21 States 83 and its progeny, to disclose information favorable  
22 to the defendants that is material to guilt or punishment.  
23 Failure to disclose may result in various consequences  
24 including, but not limited to, exclusion of evidence, adverse  
25 jury instructions, mistrial, dismissal of charges, vacatur of

1 a conviction or guilty plea, disciplinary action against the  
2 prosecution and contempt proceedings. That is the standard  
3 Rule 5(f)(1) language. That will be entered on the docket as  
4 well in written form to comply with the requirements of that  
5 rule.

6 Okay. Let's see. What else?

7 All right. In terms of a jury trial, obviously we  
8 will be discussing that further at the next status hearing.  
9 But we are set for trial on June 6th, "set for trial" being a  
10 term we use loosely these days because there's no guarantee  
11 that even if that's what we want to do that we will be able to  
12 do it given the vagaries and restrictions under the COVID  
13 situation. And I want to make sure everyone understands that.

14 THE CLERK: Judge, this is your clerk. Could you ask  
15 Mr. Hinton to put his phone on mute?

16 THE COURT: Could you ask them to put your phone on  
17 mute? Thank you.

18 DEFENDANT HINTON: Hey, they said put it on mute for  
19 me.

20 THE COURT: All right. Bear with me.

21 DEFENDANT HINTON: Hey, excuse me. They don't got no  
22 mute button. They only got a hold button.

23 THE COURT: Okay. I'm going to put you on mute then.

24 DEFENDANT HINTON: All right.

25 THE COURT: And we'll get back to you when we discuss

1 your situation. Okay?

2 DEFENDANT HINTON: All right.

3 THE COURT: Okay. Sorry.

4 All right. So we will discuss the trial date issue  
5 at our next status hearing in more detail, but I did want to  
6 make sure everyone knows that that date is still on the books,  
7 and to the extent you're looking down the road, you should be  
8 assuming that that trial date is going to go forward at this  
9 point.

10 All right. I wanted to confirm the pretrial motion  
11 situation. Mr. Lipuma, you've confirmed that you're in favor  
12 of continuing to stay briefing on the motions filed by  
13 Mr. Hinton. So we've addressed that.

14 Mr. Kutnick, your motion I think is fully briefed, as  
15 is Ms. Domp's motion, so I will try to address those as  
16 quickly as I can.

17 There's also been a motion filed by Akeem Asad to  
18 dismiss Count Two of the indictment. That -- we have a  
19 briefing schedule in place on that motion. The government's  
20 response is due February 15th, and the reply is due March 8th.

21 And then we have the filing by the government  
22 relating to requesting a conflict waiver colloquy with  
23 Mr. Hinton which we'll address in a few minutes here.

24 Other than what I've detailed, are there any other  
25 pretrial motions that are pending that I had missed in my



1 review of the docket?

2 MS. WONG: Your Honor, this is Sheri Wong speaking.

3 Not from the government's end. I think the Court has  
4 recounted all the pending pretrial motions.

5 THE COURT: All right. I don't hear any defense  
6 counsel piping up that I've missed their motion.

7 All right. So those are the pending motions. We'll  
8 proceed on the course that I've just outlined. I do want to  
9 make clear we're going to continue to exclude time through the  
10 next status hearing in light of the complexity of this case,  
11 the difficulty and the various scheduling issues inherent in a  
12 trial potentially of 12 defendants which are exacerbated  
13 tremendously by the restrictions we're operating under due to  
14 the COVID pandemic, and as well we need to address now one,  
15 two, three, four, at least five pending motions as to the  
16 complexity of the situation as well.

17 So I'm going to continue to exclude time through the  
18 next status hearing on those bases. I find the ends of  
19 justice served by excluding time on those bases outweigh the  
20 public and the defendants' interest in a speedy trial.

21 All right. Let's see what else we've got here. I  
22 think other than the discussion relating to Mr. Hinton and the  
23 potential conflict waiver there, that's it for my agenda here.  
24 Is there anything else anyone wanted to raise other than the  
25 situation relating to Mr. Hinton?

1 (No response.)

2 THE COURT: All right. Hearing nothing then --

3 MS. WONG: This is Sheri Wong speaking.

4 THE COURT: I'm sorry. Go ahead, Ms. Wong.

5 MS. WONG: I was going to say nothing from the  
6 government.

7 THE COURT: Okay. All right. I hear nothing from  
8 the defense side either so you're welcome to stay on while we  
9 discuss Mr. Hinton's situation if you wish. You're also  
10 welcome to sign off at this time. So we'll give everybody a  
11 few seconds to sign off, and then Mr. Lipuma, Mr. Hinton, stay  
12 onboard, and the government's counsel should stay on the line  
13 and we'll discuss that situation.

14 All right. Thank you. We'll talk to the rest of you  
15 February 9th.

16 Okay. Everybody that's going is probably gone.

17 All right. I received and have reviewed the  
18 government's motion to conduct an inquiry as to a potential  
19 conflict of interest. The predicate of that motion is  
20 Mr. Lipuma's representation not only of Mr. Hinton but an  
21 individual named Sincere, and is that how that first name is  
22 pronounced?

23 MS. WONG: That's correct, yes, Sincere.

24 THE COURT: Sincere Brannon.

25 Mr. Lipuma, I know there's similar filings have been

1 made in the case in which Mr. Brannon is the defendant. And I  
2 have looked at that docket and so I have seen the supplemental  
3 filings that were filed by the government and by Mr. Lipuma on  
4 behalf of Mr. Brannon in 19 CR 428 at the request of Judge  
5 Norgle. Those have been filed in that case. They're not of  
6 record yet in this case.

7 But I take it from that submission, Mr. Lipuma, and  
8 from the fact that the government's motion includes as an  
9 attachment a signed waiver, written waiver by Mr. Hinton that  
10 Mr. Hinton is not opposed having a waiver of colloquy  
11 conducted and the Court determining whether he had knowingly  
12 and voluntarily waived his right to counsel that is not  
13 wavering under a potential conflict.

14 MR. LIPUMA: Yes, Your Honor. We have had extensive  
15 talks, both Mr. Hinton and I and Mr. Brannon and I, and they  
16 certainly know each other, Judge. There's no hiding that  
17 fact. But as set forth in the pleading we filed I believe  
18 yesterday with Judge Norgle, there is really -- there's no  
19 actual conflict of interest here and there is really no  
20 potential for a conflict of interest here because as I have  
21 informed Ms. Wong, we did our homework on this, Judge, and  
22 wanted to do this the right way through professional ethics as  
23 well. But neither of the defendants in these cases are  
24 interested in cooperating with the government against the  
25 other. And one of the principal reasons behind this, Judge,

1 first of all, is the set of charges are completely different.  
2 Mr. Brannon is charged with a single day's set of offenses  
3 that occurred during a search warrant of Harriette McPherson's  
4 home, one of the codefendants in this case, and Rakim Asad,  
5 who happens to be Sincere Brannon's brother.

6           So there's quite a lot of interconnectedness here,  
7 but the charges against Sincere are very limited, and we're  
8 hopeful for a reasonable resolution in that case. And we just  
9 don't see any potential for a conflict of interest at all. So  
10 we had signed the waiver of the conflict -- Mr. Hinton has  
11 signed the waiver of conflict of interest that followed  
12 several occasion where's we discussed it and I explained it to  
13 him. And he's very adamant that he does not want to cooperate  
14 with the government. I personally see no way that I would try  
15 to, you know, spare one client at the expense of another  
16 especially when they're in different cases. And even though  
17 we are not objecting to this inquiry under Rule 44(c), I think  
18 the government's interests are legitimate. They want to  
19 protect their record. But at the same time, I do want to  
20 point out, as I did in Judge Norgle's inquiry, that Rule 44(c)  
21 really is inapplicable by the express terms of the rule.

22           Nevertheless, because we are both interested, both  
23 clients are interested in pursuing reasonable resolutions of  
24 this case and after thorough discussions, it's evidently clear  
25 to us that Mr. Hinton has voluntarily, knowingly and

1 intelligently waived any potential for a conflict of interest,  
2 and he's certainly available for the Court to inquire further  
3 with him, Judge. He certainly has read everything that I've  
4 sent to him, and like I said, I have reached out to him on  
5 multiple occasions at Kankakee County Jail. We discussed this  
6 and other things. And we respectfully request the Court to  
7 accept his waiver and allow his counsel of record to continue  
8 to represent him.

9 THE COURT: All right. Well, let me ask the  
10 government to -- its submission suggests that it is able and  
11 willing to provide more information about the factual overlap  
12 between the charges against Mr. Brannon and the charges  
13 against Mr. Hinton. And I certainly understand that the  
14 charges against Mr. Brannon are in a separate case. No. 1,  
15 that doesn't rule out the possibility there are connections  
16 there whether or not obvious on their face, but obviously the  
17 government's position that Mr. Brannon is an unindicted  
18 co-conspirator in the conspiracy that's charged in this case  
19 in Count Two of the superseding indictment does certainly  
20 raise the spectra of a potential conflict of interest with  
21 respect to the charge, at least that charge that Mr. Hinton is  
22 facing.

23 So Ms. Wong, Mr. Mower, what can you tell me in terms  
24 of the factual overlap between the conduct that's at issue  
25 with respect to Mr. Brannon and the conduct at issue with

1     respect to Mr. Hinton?

2             MS. WONG: Yes, Judge. We can certainly provide some  
3     additional details.

4             As we note in our motion and as the Court is aware,  
5     Mr. Hinton here is charged in a count -- two counts of the  
6     superseding indictment. Count One he's alleged to have been a  
7     member of the LAFA street gang who participated in the conduct  
8     of that gang's affairs which included, among other activities,  
9     narcotics trafficking and then Count Two alleges that  
10    Mr. Hinton, several co-defendants, and then other indicted  
11    co-conspirators participated in a conspiracy to possess with  
12    intent to distribute and then distribute narcotics in Chicago,  
13    Minnesota, and elsewhere. And as Mr. Lipuma noted,  
14    Mr. Brannon is charged in a separate case with narcotics and  
15    firearm offenses stemming from the seizure of firearms and  
16    narcotics on May 16, 2019.

17            In terms of the government's investigation into the  
18    LAFAs, the government uncovered evidence during that  
19    investigation that Mr. Brannon was either a LAFA member or a  
20    LAFA associate who had and has close ties to a number of the  
21    charged LAFAs, including the defendant, Mr. Hinton, and other  
22    co-defendants charged in this pending case.

23            Then as part of the LAFAs' specific narcotics  
24    activities, during the government's investigation, we  
25    uncovered evidence that Mr. Brannon was a participant in the

1 narcotics conspiracy in which Mr. Hinton is currently charged.  
2 And if the government's case were to proceed to trial, the  
3 government may elect at that trial to present evidence of  
4 Mr. Brannon's participation in the narcotics conspiracy which  
5 would include intercepted wire calls and surveillance showing  
6 Mr. Brannon making drug deliveries to customers of  
7 co-defendant Rakim Asad.

8 In addition, the government recovered from a search  
9 of Rakim Asad's residence a drug ledger with Mr. Brannon's  
10 fingerprints on it which we would argue connects him to that  
11 drug conspiracy.

12 Now, it's true that Mr. Brannon is not currently  
13 charged in the present case as a co-conspirator with  
14 Mr. Hinton, but there is, given what we've outlined thus far,  
15 sufficient factual and evidentiary overlap here that we felt  
16 it appropriate to raise the potential conflict with the Court  
17 and to have the colloquy with Mr. Hinton to ensure that he has  
18 acknowledged and he understands that he has the right to  
19 conflict-free representation, that there may be this potential  
20 conflict with Mr. Lipuma's representation with him and  
21 Mr. Brannon.

22 We believe -- we are not seeking to disqualify  
23 Mr. Lipuma from either representation. We would just request  
24 that the Court here confirm the content of Mr. Hinton's  
25 written waiver and ensure that he has, as Mr. Lipuma has, you

1 know, represented and we trust that to be the case that he's  
2 discussed this issue with Mr. Lipuma, that he understands the  
3 contents of the conflict of interest waiver and that he's, in  
4 fact, you know, signed and dated that waiver. That's all  
5 we're asking for here.

6 THE COURT: All right.

7 Anything else you want to add, Mr. Lipuma?

8 MR. LIPUMA: No, Your Honor. I think it's been  
9 pretty well covered by Ms. Wong and myself. And I appreciate  
10 the Court actually taking the step of reading the pleadings  
11 that we filed in the other case. So thank you for taking that  
12 extra step, Judge.

13 THE COURT: All right.

14 Ms. Wong, let me ask you, you said during the course  
15 of the investigation this additional evidence was developed  
16 that in the government's view connects Mr. Brannon to the  
17 Count Two conspiracy. That, No. 1, answers one of my  
18 questions which was -- or at least partly answers one of my  
19 questions which is whether something new has developed in  
20 terms of the government's investigation that accounts for the  
21 motion now which we're almost two years into the superseding  
22 indictment.

23 And I guess the other aspect I want to understand  
24 better is whether there's any evidence that the government has  
25 developed that reflects or could provide the foundation for an



1 argument as to interaction between Mr. Brannon and Mr. Hinton  
2 in connection with the conspiracy charged in Count Two.

3 MS. WONG: I'll take the first part of your question.

4 There's no new evidence that the government has  
5 uncovered with respect to the Count Two drug conspiracy. The  
6 evidence that the government would point to, as I just  
7 outlined, is evidence that would date back to I believe 2017,  
8 2016, 2017.

9 In terms of the timing, as we have indicated, we  
10 don't believe that there's an actual conflict here and that's  
11 why we have not moved to disqualify Mr. Lipuma. We believe  
12 there's just the potential conflict given the development of  
13 plea negotiations which have begun to be more concrete in the  
14 last couple of months. That's why we felt it appropriate at  
15 this time to bring the motion and raise it with the Court  
16 given that the plea negotiations have progressed to this  
17 particular stage.

18 THE COURT: All right. And the second part, just to  
19 make it easier for you in your recollection here is the  
20 outline, you know, fingerprints on the drug ledger and some  
21 involvement with other defendants, is there any evidence of,  
22 you know, interaction specifically relating to the conspiracy  
23 or arguably relating to the conspiracy between Mr. Brannon and  
24 Mr. Hinton?

25 MS. WONG: Judge, not that I am aware of, no.

1           THE COURT: All right. Okay. Well, there is  
2 certainly the potential for a conflict of interest here. I  
3 understand Mr. Lipuma's perspective having, you know,  
4 investigated the facts, having spoken with Mr. Brannon and  
5 Mr. Hinton. I understand the position that in light of the  
6 information available to him he perceives that there is not a  
7 potential conflict of interest, but I think there's clearly  
8 potential for conflict of interest regardless of what the  
9 facts appear to be at this point in time. You know, it's  
10 correct that Rule 44(c) does not by its terms apply because  
11 Mr. Brannon is not a defendant in this case. But given the  
12 government's position and the evidence supporting that  
13 position to suggest that Mr. Brannon could be a co- --  
14 unindicted co-conspirator with respect to the conspiracy  
15 charged in Count Two, certainly the concerns that animate  
16 Rule 44(c) are present virtually to the same degree that they  
17 would be present if Mr. Brannon were, in fact, a charged  
18 co-defendant in that count.

19           So I think it's appropriate for us to proceed on the  
20 basis that there is a potential for conflict of interest here.  
21 Such conflicts can be waived assuming that the waiver is  
22 knowing and voluntary, and I think it's appropriate -- it's  
23 certainly appropriate to conduct that colloquy of Mr. Hinton  
24 to make sure he understands the issues and the concerns that  
25 Mr. Lipuma's representation of both he and Mr. Brannon raised.

1           So I'm prepared to go through that colloquy now.  
2   Alternatively, if on the basis of anything that we've  
3   discussed to this point if we want to -- Mr. Lipuma, if you  
4   want to have any further dialogue with Mr. Hinton and  
5   Mr. Brannon, I'll certainly give you an opportunity to do  
6   that, or if you wanted to file anything in writing in response  
7   to the government's filing, I would certainly give you that  
8   opportunity as well.

9           How would you like to proceed?

10          MR. LIPUMA: Thank you, Judge, for the opportunity.  
11   I don't think we need to file anything further, Judge, and  
12   Mr. Hinton and I truly have discussed this on multiple  
13   occasions in-depth, Judge. So I think we're prepared to  
14   proceed today if the Court has time.

15          THE COURT: All right. I do have time, and we'll  
16   march forward.

17          All right. Mr. Hinton, I muted you, so I'm going to  
18   unmute you. Bear with me.

19          Okay. Mr. Hinton, can you hear me?

20          DEFENDANT HINTON: Yes, sir.

21          THE COURT: Okay. I know you can't do anything about  
22   the background noise probably, but keep your -- we'll not put  
23   you on mute now because I need to ask you some questions to  
24   make sure you understand what you're doing here.

25          DEFENDANT HINTON: Okay.

1           THE COURT: I'm going to go through these questions.  
2   It's important that you answer them truthfully and accurately  
3   because, No. 1, I'm going to put you under oath, and it's  
4   going to be a crime to make false statements under oath so you  
5   don't want to do that. And, No. 2, I need your truthful,  
6   accurate answers to these questions in order to make the  
7   determinations that I need to make with respect to  
8   Mr. Lipuma's representation. As we go along, if there's  
9   anything I'm asking you that you don't understand or you want  
10   me to clarify, just say so, and I will try to do that. All  
11   right?

12           DEFENDANT HINTON: Okay.

13           THE COURT: All right. The first thing I'm going to  
14   do is swear you in.

15           Do you swear or affirm that any statements you make  
16   in the course of this proceeding today will be the truth, the  
17   whole truth, and nothing but the truth?

18           DEFENDANT HINTON: Yes, sir.

19           THE COURT: All right. Would you state your full  
20   name, Mr. Hinton.

21           DEFENDANT HINTON: Carey Ramon Hinton.

22           THE COURT: And how old are you, sir?

23           DEFENDANT HINTON: 29.

24           THE COURT: Are you married?

25           DEFENDANT HINTON: No, sir.

1 THE COURT: Do you have children?

2 DEFENDANT HINTON: Yes, sir.

3 THE COURT: How many kids do you have?

4 DEFENDANT HINTON: One.

5 THE COURT: Okay. How old is he or she?

6 DEFENDANT HINTON: He's 8. It's a son. It's a he.

7 THE COURT: All right. Your son?

8 DEFENDANT HINTON: Yes, sir.

9 THE COURT: All right. Before you were taken into  
10 custody, what city or town did you live in?

11 DEFENDANT HINTON: Chicago, Illinois.

12 THE COURT: All right. Have you lived in Chicago  
13 most of your life?

14 DEFENDANT HINTON: Yes, sir.

15 THE COURT: What's the highest level of formal  
16 education you've completed?

17 DEFENDANT HINTON: GED.

18 THE COURT: All right. You have a GED?

19 DEFENDANT HINTON: Yes, sir.

20 THE COURT: All right. How far did you go in high  
21 school before you dropped out?

22 DEFENDANT HINTON: Senior year.

23 THE COURT: Senior year?

24 DEFENDANT HINTON: Yes, sir.

25 THE COURT: Okay. So you can read and write English?

1           DEFENDANT HINTON: Yeah.

2           THE COURT: Okay. Before you were taken into  
3 custody, did you have a job?

4           DEFENDANT HINTON: No, sir.

5           THE COURT: I'm sorry. I couldn't understand that.

6           DEFENDANT HINTON: No, I said no.

7           THE COURT: Okay. During your -- since you've  
8 dropped out of high school between then and now, have you been  
9 employed at various times?

10          DEFENDANT HINTON: Have I been what?

11          THE COURT: Have you had a job ever in your adult  
12 life?

13          DEFENDANT HINTON: No.

14          THE COURT: Okay. Do you feel like you're in good  
15 health?

16          DEFENDANT HINTON: Yes, sir.

17          THE COURT: All right. Are you presently taking any  
18 prescription medications?

19          DEFENDANT HINTON: No, sir.

20          THE COURT: Have you ever been under the care of any  
21 mental health professional?

22          DEFENDANT HINTON: No, sir.

23          THE COURT: All right. Have you had any drugs or  
24 alcohol in the last 24 hours?

25          DEFENDANT HINTON: No, sir.

1           THE COURT: Is there any reason that you don't feel  
2 capable of making significant decisions here this afternoon?

3           DEFENDANT HINTON: No, sir.

4           THE COURT: All right. You understand -- you  
5 understand that the nature of what we're talking about is  
6 whether Mr. Lipuma can continue to represent both you and  
7 Mr. Brannon?

8           DEFENDANT HINTON: Yes, sir.

9           THE COURT: Okay. And are you prepared to address  
10 questions that relate to that topic?

11          DEFENDANT HINTON: Yes, sir.

12          THE COURT: Okay.

13          Mr. Lipuma, are you aware of any reason that  
14 Mr. Hinton is not competent to proceed here with this waiver  
15 colloquy this afternoon?

16          MR. LIPUMA: I don't have any doubts about his  
17 competency, Your Honor.

18          THE COURT: Ms. Wong, Mr. Mower, does the government  
19 have any reason to doubt Mr. Hinton's competency to waive his  
20 right to conflict-free representation?

21          MS. WONG: Your Honor, the government has no doubts  
22 about Mr. Hinton's competency.

23          THE COURT: Okay.

24          All right. Mr. Hinton, what's the name of the  
25 attorney who represents you in this case?

1 THE DEFENDANT: Francis Lipuma.

2 THE COURT: All right. And are you satisfied with  
3 the advice and counsel that Mr. Lipuma has given you as your  
4 attorney?

5 DEFENDANT HINTON: Yes, sir.

6 THE COURT: Is there anything you think Mr. Lipuma  
7 should have done or should be doing for you that he has not  
8 been doing for you?

9 DEFENDANT HINTON: No, sir.

10 THE COURT: And do you want Mr. Lipuma to continue to  
11 represent you in this matter?

12 DEFENDANT HINTON: Yes, sir.

13 THE COURT: All right. In order for Mr. Lipuma to  
14 continue to represent you in this matter, I need to make sure  
15 that you understand some rights that you have and that you're  
16 giving up those rights and you know what you're doing in  
17 giving up those rights.

18 DEFENDANT HINTON: Okay.

19 THE COURT: You have a right under the Sixth  
20 Amendment of the United States Constitution to effective  
21 assistance of counsel at all stages during the course of the  
22 criminal trial. Do you understand that?

23 DEFENDANT HINTON: Yes, sir.

24 THE COURT: All right. What we're doing here is I  
25 need to make sure that you are fully advised about a potential



1 conflict of interest that Mr. Lipuma may have in representing  
2 you. A conflict of interest is basically a situation that  
3 might result in your attorney having divided loyalty. Do you  
4 understand that's what a conflict of interest is?

5 DEFENDANT HINTON: Yes, sir.

6 THE COURT: All right. Your attorney, Mr. Lipuma,  
7 owes you an undivided loyalty. By that I mean that his sole  
8 concern is supposed to be your welfare and your interest.  
9 That's his duty to look after as your attorney. Do you  
10 understand that?

11 DEFENDANT HINTON: Yes, sir.

12 THE COURT: All right. Now, I've been advised by the  
13 government that Mr. Lipuma, in addition to his representation  
14 of you, also represents another individual who is a defendant  
15 in a separate criminal case. That individual is Sincere  
16 Brannon. Mr. Brannon is charged in that case with possession  
17 with intent to distribute marijuana and possession of a  
18 firearm in connection with drug trafficking.

19 The government has also advised the Court that it  
20 considers Mr. Brannon to be an uncharged co-conspirator in the  
21 drug conspiracy that you are charged with in Count Two of the  
22 superseding indictment in this case. That means that the  
23 government thinks you conspired with Mr. Brannon as well as  
24 with the other defendants who are charged in Count Two even  
25 though the government has not charged Mr. Brannon in

1 participating in that conspiracy. Do you understand that?

2 DEFENDANT HINTON: Yes, sir.

3 THE COURT: All right. You should also understand  
4 that just because Mr. Brannon has not been charged with  
5 participating in that conspiracy does not necessarily mean  
6 that he won't be charged with participating in that  
7 conspiracy. The government could still seek to supersede  
8 again to add Mr. Brannon to that charge or to add other  
9 charges or other defendants in that charge. Do you understand  
10 that?

11 DEFENDANT HINTON: Yes, sir.

12 THE COURT: All right. Now, I want to make sure you  
13 understand that the charges you're facing in this case are  
14 serious charges. In Count One, you're charged with  
15 participating in a racketeering enterprise, or conspiring to  
16 participate in a racketeering enterprise by, among other  
17 things, attempting to murder another individual. You  
18 understand that that's the nature of the charge in Count One?

19 DEFENDANT HINTON: Yes, sir.

20 THE COURT: And in Count Two, you're charged with  
21 conspiring to possess with intent to distribute and distribute  
22 controlled substances. You understand that's the nature of  
23 the charge you're facing in Count Two?

24 DEFENDANT HINTON: Yes, sir.

25 THE COURT: And each of those counts -- and,

1 Ms. Wong, you can correct me if I've got this wrong, but each  
2 of these counts carries a maximum term of imprisonment for you  
3 of up to 20 years. So if you're convicted of these crimes,  
4 you could be imprisoned for up to 40 years. Do you understand  
5 that?

6 DEFENDANT HINTON: Yes, sir.

7 MS. WONG: Judge, if I could.

8 THE COURT: Yes.

9 MS. WONG: I believe on Count Two, the maximum term  
10 of imprisonment is 40 years.

11 THE COURT: I didn't think the quantity element was  
12 applicable to Mr. Hinton.

13 MS. WONG: No, but based on the conspiracy charge, I  
14 believe the maximum is 40 years. There's no mandatory minimum  
15 that's alleged.

16 THE COURT: Okay.

17 So, Mr. Hinton, I stand corrected. On Count Two, the  
18 maximum penalty is 40 years. So if you're convicted on both  
19 counts, you could face a sentence of up to 60 years of  
20 imprisonment. Do you understand that?

21 DEFENDANT HINTON: Yes, sir.

22 THE COURT: Okay. All right. And you're aware, I  
23 take it, that Mr. Lipuma represents Mr. Brannon?

24 DEFENDANT HINTON: Yes, sir.

25 THE COURT: All right. And you had an opportunity to

1 discuss that issue with Mr. Lipuma?

2 DEFENDANT HINTON: Yes, sir.

3 THE COURT: All right. And by virtue of his  
4 representation of Mr. Brannon, do you understand that  
5 Mr. Lipuma owes the same duty of loyalty to Mr. Brannon that  
6 he owes to you?

7 DEFENDANT HINTON: Yes, sir.

8 THE COURT: All right. Do you understand those  
9 duties of loyalty that he owes to Mr. Brannon and to you may  
10 create a conflict, a situation where Mr. Lipuma has divided  
11 loyalties? Do you understand that?

12 DEFENDANT HINTON: Yes, sir.

13 THE COURT: All right. I want to give you some  
14 examples of how that might -- could play out.

15 A lawyer who represents two defendants in a common  
16 investigation or case may not investigate the cases thoroughly  
17 if there's a reason to think doing so will harm the interest  
18 of the other -- of one of the two defendants, or in this case  
19 I'm going to phrase all of this in the context of you and  
20 Mr. Brannon. So it's possible theoretically, and I -- in  
21 giving you these examples, I'm not suggesting that this would  
22 be the case with Mr. Lipuma, but these are the kinds of  
23 problems and conflicts that can arise when an attorney  
24 represents two clients in a related criminal proceeding.

25 Do you understand that Mr. Lipuma might not

1 investigate the cases thoroughly if there's reason to think  
2 that doing so would harm Mr. Brannon's interest?

3 DEFENDANT HINTON: Yes, sir.

4 THE COURT: Do you understand that if Mr. Brannon  
5 were to say something helpful about you to Mr. Lipuma but it  
6 was harmful to him, Mr. Lipuma may not be able to share that  
7 information with you or use it to help you because it's  
8 privileged and may harm Mr. Brannon. Do you understand that?

9 DEFENDANT HINTON: Yes. Yes, sir.

10 THE COURT: So in other words, if Mr. Lipuma had a  
11 conversation with Mr. Brannon where he said Carey Hinton  
12 wasn't involved at all, it was all me, I did all that stuff  
13 that's charged in there, Mr. Lipuma would not be able to tell  
14 you that. He would not be able to use that information to  
15 help you defend against the charges. Do you understand that?

16 DEFENDANT HINTON: Yes, sir.

17 THE COURT: All right. Do you understand that if the  
18 government were to offer a deal to you to cooperate against  
19 Mr. Brannon and possibly other defendants, he would not be  
20 able to entertain that possibility and you might not even hear  
21 about it? Do you understand that?

22 DEFENDANT HINTON: Yes, sir.

23 THE COURT: You understand there could be evidence  
24 that the government offers at trial against you that your  
25 lawyer may not object to because it's helpful to Mr. Brannon,

1 or there may be evidence helpful to you that Mr. Lipuma  
2 doesn't offer into evidence because it's harmful to  
3 Mr. Brannon. You understand that's a possibility?

4 DEFENDANT HINTON: Yes, sir.

5 THE COURT: All right. Do you understand if the case  
6 went to trial you would have the right to testify or not  
7 testify if you so chose? Do you understand that Mr. Lipuma's  
8 advice about whether you should testify or not might be  
9 tainted because of concerns about what you may be asked about  
10 Mr. Brannon's conduct?

11 DEFENDANT HINTON: Yes, sir.

12 THE COURT: So in other words, Mr. Lipuma might be in  
13 a situation where he doesn't give you the real benefit of his  
14 advice about whether it's good for you to testify or not. He  
15 might be compelled to think about whether it's good for  
16 Mr. Brannon for you to testify or not. Do you understand that  
17 possibility?

18 DEFENDANT HINTON: Yes, sir.

19 THE COURT: So do you understand that if Mr. Brannon  
20 were to testify either in his case or if he was ultimately  
21 charged in this case, if he were to testify and say something  
22 harmful about you, Mr. Lipuma might not be able to effectively  
23 cross-examine Mr. Brannon because he can't use all the  
24 information he has about Mr. Brannon because it's privileged?

25 DEFENDANT HINTON: Yes, sir.

1           THE COURT: Do you understand that during a trial or  
2 during sentencing or even in plea negotiations with the  
3 government, Mr. Lipuma might not be able to argue or might not  
4 want to argue that Mr. Brannon is more culpable than you  
5 because that would hurt Mr. Brannon?

6           DEFENDANT HINTON: Yes, sir.

7           THE COURT: All right. So in other words, it's a  
8 common argument for a lawyer to say, look, my client was a  
9 small fish compared to all these other people, and his  
10 sentence should be much lower, or you should cut him a much  
11 better deal. Mr. Lipuma, by virtue of his dual  
12 representation, wouldn't be able to make that argument if he  
13 was comparing you to Mr. Brannon. He wouldn't be able to say,  
14 look, Brannon was really the guy that was in charge here or he  
15 was the one who was really doing the serious misconduct, not  
16 my guy. He wouldn't be able to make that argument. Do you  
17 understand that?

18          DEFENDANT HINTON: Yes, sir.

19          THE COURT: All right. You also understand that it's  
20 conceivable that Mr. Lipuma could have financial incentive  
21 arising from dual representation that lead him to favor  
22 Mr. Brannon or that color his advice about whether he can  
23 effectively represent you. And by that I mean first,  
24 Mr. Lipuma obviously makes more money if he represents you  
25 both. He gets paid by two defendants rather than one

1 defendant. Do you understand that?

2 DEFENDANT HINTON: Yes, sir.

3 THE COURT: All right. And you also understand that  
4 Mr. Lipuma -- and, Mr. Lipuma, you can correct me if I'm  
5 wrong. But based on the docket, I understand that Mr. Lipuma  
6 is retained by Mr. Brannon, meaning Mr. Brannon is paying him.  
7 He is not appointed by the federal defender.

8 Is that correct, Mr. Lipuma?

9 MR. LIPUMA: Yes, Judge, that's correct. I have been  
10 appointed in this case, and I was retained by Mr. Brannon back  
11 in 2019.

12 THE COURT: Okay.

13 So Mr. Lipuma is getting paid by Mr. Brannon. That  
14 could create a situation where Mr. Lipuma is reluctant to  
15 withdraw from his representation of Mr. Brannon given the  
16 adverse financial impact that could cause Mr. Brannon. Do you  
17 understand that possibility?

18 DEFENDANT HINTON: Yes, sir.

19 THE COURT: And do you understand, again, generally  
20 that the advice Mr. Lipuma has given you about this conflict  
21 issue might be colored by his desire to continue representing  
22 both you and Mr. Brannon?

23 DEFENDANT HINTON: Yes. Yes, sir.

24 THE COURT: All right. Now, understanding that, the  
25 Court is willing to appoint new counsel for the limited



1 purpose of advising you about this waiver, meaning it would be  
2 a good idea, and I will appoint someone for you to talk to who  
3 doesn't have any potential involvement in this case about  
4 whether it's a good idea for you to continue with Mr. Lipuma  
5 as your lawyer or not. Do you want to discuss this issue with  
6 independent counsel before proceeding?

7 DEFENDANT HINTON: No, it's okay.

8 THE COURT: All right. Did you sign a waiver of a  
9 conflict of interest form?

10 DEFENDANT HINTON: Yes, sir.

11 THE COURT: All right. Before you signed that form,  
12 did you review it carefully?

13 DEFENDANT HINTON: Yes, sir.

14 THE COURT: Did you discuss it with Mr. Lipuma?

15 DEFENDANT HINTON: Yes, sir.

16 THE COURT: Did you discuss it with any other lawyer?

17 DEFENDANT HINTON: No, sir.

18 THE COURT: Do you have any questions about the  
19 waiver of the conflict of interest that you signed?

20 DEFENDANT HINTON: No, sir.

21 THE COURT: Did you sign it voluntarily?

22 DEFENDANT HINTON: Yes, sir.

23 THE COURT: Did anyone try to force you to sign it?

24 DEFENDANT HINTON: No, sir.

25 THE COURT: Did anyone promise you anything at all if

1     you did sign it?

2                 DEFENDANT HINTON: No, sir.

3                 THE COURT: Do you understand that that waiver, that  
4     written waiver that you signed says that you want Mr. Lipuma  
5     to continue to represent you even though you may have a  
6     conflict of interest?

7                 DEFENDANT HINTON: Yes, sir.

8                 THE COURT: And do you understand that in waiving any  
9     conflict of interest that Mr. Lipuma might have you're giving  
10    up your right to argue that Mr. Lipuma rendered ineffective  
11    assistance of counsel due to any conflict of interest that may  
12    arise? Do you understand that?

13                DEFENDANT HINTON: Yes, sir.

14                THE COURT: So in other words, you wouldn't be able  
15    to argue for a new trial or reversal on appeal that Mr. Lipuma  
16    did something that constituted ineffective assistance of  
17    counsel because of or on account of this conflict of interest  
18    that you might have. You wouldn't be able to make that  
19    argument. Do you understand that?

20                DEFENDANT HINTON: Yes, sir.

21                THE COURT: So if Mr. Lipuma were to do something as  
22    your lawyer during the investigation or the prosecution or the  
23    trial of this case that you think favors Mr. Brannon's  
24    interests over yours, you're not going to have a remedy for  
25    that. You're not going to be able to withdraw a guilty plea

1 or get a new trial based on that conflict. Do you understand  
2 that?

3 DEFENDANT HINTON: Yes, sir.

4 THE COURT: All right. And, again, do you understand  
5 that if you don't want Mr. Lipuma to continue to represent  
6 you, the Court would appoint new counsel to represent you in  
7 his place? You understand that?

8 DEFENDANT HINTON: Yes, sir.

9 THE COURT: All right. And, again, do you want the  
10 Court to appoint an independent lawyer to advise you on this  
11 issue?

12 DEFENDANT HINTON: No, sir.

13 THE COURT: Do you have any questions that you want  
14 to ask the Court?

15 DEFENDANT HINTON: No, sir.

16 THE COURT: All right. Ms. Wong, Mr. Mower, anything  
17 else that the government would like to have included in this  
18 colloquy?

19 MS. WONG: Your Honor, in reviewing the written  
20 waiver, there is an error in paragraph 3 that I just wanted to  
21 bring to the Court's attention and to also Mr. Lipuma and  
22 Mr. Hinton's attention.

23 I think we've covered this in the colloquy, but  
24 paragraph 3 currently reads, "I have chosen Francis Lipuma as  
25 my attorney in this matter." And I think that should be

1 corrected to say that "Francis Lipuma has been appointed as  
2 my attorney in this matter." And I just wanted to raise  
3 that --

4 THE COURT: Okay.

5 MS. WONG: -- to correct the record on that issue.

6 THE COURT: All right. For the record, I read that  
7 to be a confirmation of his desire to continue with  
8 Mr. Lipuma.

9 But just to clarify the situation, you understand,  
10 Mr. Hinton, that Mr. Lipuma has been -- was originally --  
11 became your attorney in this matter because he was appointed  
12 by the Court?

13 DEFENDANT HINTON: Yes, sir. Yes, sir.

14 THE COURT: Okay. All right. And you understand  
15 that the way that he became Mr. Brannon's lawyer was  
16 different. Mr. Brannon reached out and hired Mr. Lipuma  
17 without the involvement of the Court. Do you understand that?

18 DEFENDANT HINTON: Yes, sir.

19 THE COURT: All right. And you understand, again, as  
20 I just asked you, that if you were to decide that you didn't  
21 want Mr. Lipuma to continue because of these potential  
22 conflicts of interest that the Court would appoint another  
23 lawyer for you to come in and take Mr. Lipuma's place? You  
24 understand that?

25 DEFENDANT HINTON: Yes, sir.

1           THE COURT: All right. And it's your decision and  
2 your choice today that knowing all of this and the potential  
3 conflict of interest that could affect Mr. Lipuma's  
4 representation of you you still want Mr. Lipuma to continue as  
5 your lawyer in this case?

6           DEFENDANT HINTON: Yes, sir.

7           THE COURT: Anything else from the government?

8           MS. WONG: Nothing else from the government.

9           THE COURT: Mr. Lipuma, anything else that you think  
10 should be included in the colloquy?

11          MR. LIPUMA: No, Your Honor. I think it's been very  
12 well covered.

13          THE COURT: All right.

14          Based on our discussion here this afternoon, based on  
15 my oral colloquy with Mr. Hinton, his responses which have  
16 been made under oath, the filings the government and both  
17 Mr. Lipuma made in the case in which Mr. Brannon is charged, I  
18 do conclude that Mr. Hinton is knowingly and voluntarily  
19 waiving any conflict of interest that may arise by virtue of  
20 Mr. Lipuma's representation of Mr. Brannon and Mr. Hinton. I  
21 find that Mr. Hinton waives that conflict of interest or any  
22 potential conflict of interest that might arise from that  
23 representation and that Mr. Lipuma may continue to represent  
24 Mr. Hinton going forward in this case.

25          All right. Mr. Hinton, the last thing I want to make

1    sure you understand is if you change your mind and decide that  
2    Mr. Lipuma -- that you don't want Mr. Lipuma to go forward  
3    because of the conflict of interest, you need to notify him of  
4    that ASAP, and Mr. Lipuma will advise the Court and we will  
5    revisit this decision. Do you understand that?

6               DEFENDANT HINTON: Yes, sir.

7               THE COURT: Okay. All right. I think that covers  
8    what we need to cover with respect to the waiver of  
9    Mr. Lipuma's representation of Mr. Brannon.

10              Anything else?

11              MS. WONG: Nothing else from the government.

12              MR. LIPUMA: Judge, if I just may ask because it's so  
13    hard to maintain contact with people in custody. Could I just  
14    ask Mr. Hinton if he has received the letter I sent him with  
15    the plea agreement?

16              THE COURT: Sure.

17              DEFENDANT HINTON: Yeah, I received it.

18              MR. LIPUMA: Okay. I'm going to set up a legal call,  
19    okay, and we'll talk soon.

20              DEFENDANT HINTON: All right.

21              MR. LIPUMA: Thank you very much, Your Honor.

22              THE COURT: Okay. All right. Thank you.

23              We'll reconvene on February 9th. If there's a need  
24    to do anything sooner, contact my courtroom deputy.

25              Thank you. We're adjourned.

1 MR. LIPUMA: Thank you, sir.

2 MS. WONG: Thank you.

3 (Which were all of the proceedings heard.)

4

5 C E R T I F I C A T E

6 I certify that the foregoing is a correct transcript,  
7 to the extent possible, of the record of proceedings in the  
8 above-entitled matter given the limitations of conducting  
9 proceedings via telephone.

10

11 /s/ KELLY M. FITZGERALD  
12 KELLY M. FITZGERALD, CSR, RMR, CRR  
Official Court Reporter

May 7, 2022

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